

ATTACHMENT E

STANDARD PROVISIONS AND REPORTING REQUIREMENTS FOR

GENERAL WASTE DISCHARGE REQUIREMENTS AND GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR EXISTING MILK COW DAIRY CONCENTRATED ANIMAL FEEDING OPERATIONS WITHIN THE CENTRAL VALLEY REGION

XX Month 2010

A. Introduction:

1. These Standard Provisions and Reporting Requirements (SPRR) are applicable to existing milk cow dairies that are regulated pursuant to the provisions of the Federal Clean Water Act as Concentrated Animal Feeding Operations (CAFO) and of Title 27 California Code of Regulations (CCR) Division 2, Subdivision 1, Chapter 7, Subchapter 2, Sections 22560 et seq.
2. Any violation of the Order constitutes a violation of the California Water Code and, therefore, may result in enforcement action.
3. If there is any conflicting or contradictory language between the Order, the Monitoring and Reporting Program (MRP) associated with the Order, or the SPRR, then language in the Order shall govern over the MRP and the SPRR, and language in the MRP shall govern over the SPRR.

B. Standard Provisions:

1. The Discharger shall comply with the following subparagraphs of 40 CFR Part 122.41, which are hereby incorporated by reference:
 - a. Part 122.41(a)(1)
 - b. Part 122.41(b) through Part 122.41(n). .
2. The Discharger must comply with all conditions of this Order. Any noncompliance with the Order constitutes a violation of the Act and is grounds for enforcement action; for Order termination, revocation, and reissuance; for denial of an Order renewal application; and/or for requiring a Discharger to apply for and obtain an individual NPDES Order.
3. The requirements prescribed in the Order do not authorize the commission of any act causing injury to the property of another, or protect the Discharger from liabilities under federal, state, or local laws.

4. The Discharger shall comply with all federal, state, county, and local laws and regulations pertaining to the discharge of wastes from the facility that are at least as stringent as the requirements of the Order.
5. All discharges from the facility must comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to storm drain systems or to other courses under their jurisdiction that are at least as stringent as the requirements of the Order.
6. The Order does not convey any property rights or exclusive privileges.
7. The provisions of the Order are severable. If any provision of the Order is held invalid, the remainder of the Order shall not be affected.
8. The Discharger shall take all reasonable steps to minimize any adverse impact to the waters of the State resulting from noncompliance with the Order. Such steps shall include accelerated or additional monitoring as necessary to determine the nature and impact of the noncompliance.
9. The fact that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the Order shall not be a defense for violations of the Order by the Discharger.
10. The filing of a request by the Discharger for modification, revocation and reissuance, or termination of the Order, or notification of planned changes or anticipated noncompliance, does not stay any condition of the Order.
11. The Discharger shall ensure compliance with existing and/or future promulgated standards that apply to the discharge.
12. The Discharger shall permit representatives of the Central Valley Water Board and the State Water Resources Control Board (State Water Board), upon presentations of credentials at reasonable hours, to:
 - a. Enter premises where wastes are treated, stored, or disposed and where any records required by the Order are kept;
 - b. Copy any records required to be kept under terms and conditions of the Order;
 - c. Inspect facilities, equipment (monitoring and control), practices, or operations regulated or required by the Order; and
 - d. Sample, photograph, and/or video tape any discharge, waste, waste management unit, or monitoring device.

13. The Discharger shall properly operate and maintain in good working order any facility, unit, system, or monitoring device installed to achieve compliance with the Order. Proper operation and maintenance includes best practicable treatment and controls, and the appropriate quality assurance procedures.
14. Animal waste storage areas and containment structures shall be designed, constructed, and maintained to limit, to the greatest extent possible, infiltration, inundation, erosion, slope failure, washout, overtopping, by-pass, and overflow.
15. Setbacks or separation distances contained under Water Wells, Section 8, Part II, in the *California Well Standards, Supplemental Bulletin 74-90 (June 1991)*, and *Bulletin 94-81 (December 1981)*, California Department of Water Resources (DWR), shall be maintained for the installation of all monitoring wells and groundwater supply wells at existing dairies. A setback of 100 feet is required between supply wells and animal enclosures in the production area. A minimum setback of 100 feet shall be required for the protection of existing wells or new wells installed in the cropland; in the alternative, the Discharger may substitute a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited, or may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback. If a county or local agency adopts more stringent setback standards than that adopted by the DWR, then these local standards shall carry precedence over the Well Standards of DWR, and the Discharger shall comply with the more stringent standards.
16. Following any storm event that causes the freeboard of any wastewater holding pond to be less than one (1) foot for below-grade ponds, or two (2) feet for above-grade ponds, the Discharger shall take action as soon as possible to provide the appropriate freeboard in the wastewater holding pond.
17. For any electrically operated equipment at the facility, the failure of which would cause loss of control or containment of waste materials, or violation of this Order, the Discharger shall employ safeguards to prevent loss of control over wastes or violation of this Order. Such safeguards may include alternate power sources, standby generators, standby pumps, additional storage capacity, modified operating procedures, or other means.
18. Bypass
 - a. Definitions –
 - (1) “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.

- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- b. Bypass not exceeding limitations - . The Discharger may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the notice and prohibition provisions below.
- c. Notice –
 - (1) Anticipated bypass - If the Discharger knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
 - (2) Unanticipated bypass - The Discharger shall submit notice of an unanticipated bypass as required in the Monitoring and Reporting Program (Priority Reporting of Significant Events).
- d. Prohibition of bypass –
 - (1). Bypass is prohibited, and the Executive Officer may pursue enforcement action against a Discharger for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The Discharger submitted notices as required under the Monitoring and Reporting Program (Priority Reporting of Significant Events);
 - (2) The Executive Officer may approve an anticipated bypass, after considering its adverse effects, if the Executive Officer determines that it will meet the three conditions listed above in section d (1).

19. Upset

- a. Definition – “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with Order conditions because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. Effect of an upset – An upset constitutes an affirmative defense to an action brought for noncompliance with Order conditions if the requirements of paragraph 19 c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset - A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the Discharger can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The Discharger submitted notice of the upset as required in the Monitoring and Reporting Program (Priority Reporting of Significant Events); and
 - (4) The Discharger took all reasonable steps to minimize or prevent any discharge in violation of this Order which had a reasonable likelihood of adversely affecting human health or the environment.
- d. Burden of proof – In any enforcement proceeding the Discharger seeking to establish the occurrence of an upset has the burden of proof.

C. General Reporting Requirements:

1. The Discharger shall give at least 60 days advance notice to the Central Valley Water Board of any planned changes in the ownership or control of the facility.
2. In the event of any change in control or ownership of land or waste discharge facilities presently owned or controlled by the Discharger, the Discharger shall notify the succeeding owner or operator of the existence of the Order by letter at least 60 days in advance of such change, a copy of which shall be immediately forwarded to

the appropriate Central Valley Water Board office listed below in the General Reporting Requirements C.11.

3. To assume operation under the Order, any succeeding owner or operator must request, in writing, that the Executive Officer transfer coverage under the Order. The Central Valley Water Board will provide a form for this request that will allow the succeeding owner or operator to provide their full legal name, address and telephone number of the persons responsible for contact with the Central Valley Water Board and a responsibility statement and a signed statement in compliance with General Reporting Requirement C.7 below. The form will also include a statement for signature that the new owner or operator assumes full responsibility for compliance with the Order and that the new owner or operator will implement the Waste Management Plan and the NMP prepared by the preceding owner or operator. Transfer of the Order shall be approved or disapproved in writing by the Executive Officer. The succeeding owner or operator is not authorized to discharge under the Order and is subject to enforcement until written approval of the coverage transfer from the Executive Officer.
4. The Executive Officer may require the Discharger to submit technical reports pursuant to the Order and California Water Code Section 13267.
5. The Discharger shall identify any information that may be considered to be confidential under state law and not subject to disclosure under the Public Records Act. The Discharger shall identify the basis for confidentiality. If the Executive Officer cannot identify a reasonable basis for treating the information as confidential, the Executive Officer will notify the Discharger that the information will be placed in the public file unless the Central Valley Water Board receives, within 10 calendar days, a written request from the Discharger to keep the information confidential containing a satisfactory explanation supporting the information's confidentiality.
6. Except for data determined to be exempt from disclosure under the Public Records Act (California Government Code Sections 6275 to 6276), and data determined to be confidential under Section 13267(b)(2) of the California Water Code, all reports prepared in accordance with the Order and submitted to the Executive Officer shall be available for public inspection at the offices of the Central Valley Water Board. Data on waste discharges, water quality, meteorology, geology, and hydrogeology shall not be considered confidential.
7. All technical reports and monitoring program reports shall be accompanied by a cover letter with the certification specified in C.8 below and be signed by a person identified below:
 - a. For a sole proprietorship: by the proprietor;
 - b. For a partnership: by a general partner;

- c. For a corporation: by a principal executive officer of at least the level of senior vice-president in charge of a principal business function; or
- d. A duly authorized representative if:
 - (1) The authorization is made in writing by a person described in Subsection a, b, or c of this provision;
 - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility, such as the position of manager. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and
 - (3) The written authorization is submitted to the Central Valley Water Board.
- 8. Each person, as specified in C.7 above, signing a report required by the Order or other information requested by the Central Valley Water Board shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
- 9. In addition to Item C.7 above, all technical reports required in the Order that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by, or under the direction of, and signed by persons registered to practice in California pursuant to California Business and Professions Code, Sections 6735, 7835, and 7835.1 or federal officers and employees who are exempt from these Sections by California Business and Professions Code, Section 6739 or 7836. To demonstrate compliance with Title 16 CCR, Sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
- 10. The Discharger shall file a new Report of Waste Discharge with the Central Valley Water Board at least 140 days before making any material change in the character, location, or volume of the discharge. A material change may result in termination of coverage under this Order and issuance of an individual NPDES Order. A material change includes, but is not limited to, the following:

- a. The addition of a new wastewater that results in a change in the character of the waste;
 - b. Significantly changing the disposal or waste application method or location;
 - c. Significantly changing the method of treatment;
 - d. Increasing the discharge flow beyond that specified in the Order; or
 - e. Expanding existing herd size beyond 15 percent.
11. The Discharger shall file proposed revisions to the Nutrient Management Plan and Waste Management Plan with the Central Valley Water Board at least 140 days before implementing any change in the NMP or WMP, including substantial changes. Upon notification from the Central Valley Water Board or Executive Officer, the Discharger may implement the revised NMP or WMP. A substantial change may result in termination of the existing Site Specific Order and issuance of a new Site Specific Order. A substantial change includes, but is not limited to, the following:
- a. Addition of new land application areas not previously included in the CAFO's NMP except that if the added land application area is covered by the terms of a NMP incorporated into an existing NPDES permit and the Discharger complies with such terms when applying manure and process wastewater to the added land;
 - b. Changes to the maximum amounts of nitrogen derived from all sources applied to each crop (pounds of N from manure and process wastewater);
 - c. Addition of any crop or other uses not included in the terms of the CAFO's NMP; and/or
 - d. Changes to site-specific components of the CAFO's NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the United States; or
 - e. Reducing the storage capacity for process wastewater such that storage capacity is no longer adequate.
12. If the Executive Officer determines that the proposed changes to the NMP and/or WMP do not necessitate revision to the Discharger's Site Specific Order, it will notify the Discharger that it may implement the revised NMP or WMP.
13. If the Executive Officer determines that the changes to the the NMP and/or WMP, as described in sections c.10. and c. 11. above, will require changes to the Site Specific Order, but that those changes are not substantial or material, the Executive Officer

will make the revised NMP and/or WMP publicly available and include it in the Order record, revise the terms of the Site Specific Order, and notify the Discharger and the public of the changes to the terms of the Site Specific Order.

14. If the Executive Officer determines that the required changes to the Site Specific Order are substantial, the Executive officer will notify the public, make the proposed changes changes to the Site Specific Order and the information submitted by the Discharger available for public review and comment, and respond to all significant comments received during the comment period, pursuant to the procedure outlined in Section H of the Order. The Executive Officer may require the Discharger to further revise the NMP and or WMP. The Central Valley Water Board, in a public meeting, will hear and consider all comments pertaining to the changes and will vote to grant or deny coverage to the Discharger. The Executive Officer will then notify the Discharger of the Board's final decision.

15. All reports shall be submitted to the following address:

For facilities in Fresno, Kern, Kings, Madera, Mariposa, and Tulare counties, submit reports to:

California Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, CA 93706
Attention: Confined Animal Regulatory Unit

For facilities in Butte, Lassen, Modoc, Plumas, Tehama, and Shasta counties, submit reports to:

California Regional Water Quality Control Board
Central Valley Region
415 Knollcrest Drive, Suite 100
Redding, CA 96002
Attention: Confined Animal Regulatory Unit

For facilities in all other counties, submit reports to:

California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670
Attention: Confined Animal Regulatory Unit

D. Requirements Specifically for Monitoring Programs and Monitoring Reports:

1. The Discharger shall file self-monitoring reports and/or technical reports in accordance with the detailed specifications contained in the MRP attached to the Order.
2. The Discharger shall maintain a written monitoring program sufficient to assure compliance with the terms of the Order. Anyone performing monitoring on behalf of the Discharger shall be familiar with the written program.
3. The monitoring program shall include observation practices, sampling procedures, and analytical methods designed to ensure that monitoring results provide a reliable indication of water quality at all monitoring points.
4. All instruments and devices used by the Discharger for the monitoring program shall be properly maintained and shall be calibrated as recommended by the manufacturer and at least once annually to ensure their continued accuracy.
5. The Discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by the Order, and records of all data used to complete the reports. Records shall be maintained for a minimum of five years from the date of sample, measurement, report, or application. Records shall also be maintained after facility operations cease if wastes that pose a threat to water quality remain at the site. This five-year period may be extended during the course of any unresolved litigation regarding the discharge or when requested in writing by the Central Valley Water Board Executive Officer.
 - a. Records of on-site monitoring activities shall include the:
 - (1) Date that observations were recorded, measurements were made, or samples were collected;
 - (2) Name and signature of the individual(s) who made the observations, made and recorded the measurements, or conducted the sampling;
 - (3) Location of measurements or sample collection;
 - (4) Procedures used for measurements or sample collection;
 - (5) Unique identifying number assigned to each sample; and
 - (6) Method of sample preservation utilized.
 - b. Records of laboratory analyses shall include the:
 - (1) Results for the analyses performed on the samples that were submitted;
 - (2) Chain-of-custody forms used for sample transport and submission;

- (3) Form that records the date that samples were received by the laboratory and specifies the analytical tests requested;
- (4) Name, address, and phone number of the laboratory which performed the analysis;
- (5) Analytical methods used;
- (6) Date(s) analyses were performed;
- (7) Identity of individual(s) who performed the analyses or the lab manager; and
- (8) Results for the quality control/quality assurance (QA/QC) program for the analyses performed.

E. Enforcement

1. California Water Code Section 13385 provides that any person who violates an NPDES permit is subject to civil liability of up to \$10,000 per day or \$25,000 per day of violation, or when the violation involves the discharge of pollutants, is subject to civil liability of up to \$10 per gallon, or \$25 per gallon; or some combination thereof, depending on the violation, or upon the combination of violations. In addition, there are a number of other enforcement provisions that may apply to violation of the Order.